Environmental law is the law concerned with environmental problems. It is a vast area of law that operates from the local to the global, involving a range of different legal and regulatory techniques. In theory, environmental protection is obvious and ethically desirable. Yet, in practice, environmental law is a messy and complex business fraught with conflict. Environmental Law: A Very Short Introduction discusses the nature and practice of environmental law, and explores the role of lawmakers, courts, and regulators. It analyses why environmental law is both a fundamental and controversial area of law, dealing with multiple interests, socio-political conflicts, and the limits of knowledge about the environment, using examples from across the globe.

8. Ensuring the effectiveness of environmental law

Much of the stretching of the legal imagination of environmental lawyers has been trying to make environmental law more effective. Enforcement practices have evolved, innovative regulatory strategies have been developed, and courts have been entrusted with a role in enforcement. ‘Ensuring the effectiveness of environmental law’ looks at how the success of environmental laws is assessed. For some laws, success is obvious, but for others it is less so; the effective management of environmental problems is often an ongoing process. The challenges of enforcement are also discussed, along with public engagement that can improve the effectiveness of environmental laws through vesting in the public a range of different rights to participate and enforce environmental laws.
The inherent complexity of environmental problems resonates throughout the creation and operation of environmental law. It shapes its structure and gives rise to questions that push the legal imagination of lawyers. ‘Environmental problems’ discusses the many types of environmental problems—from air pollution and wilderness destruction to waste dumping and climate change—and considers their common structure. It outlines the common structure of these problems and explains the finite capacity of the physical environment. Science has played a fundamental role in increasing our understanding of environmental problems, but it is also limited by the fact that in studying the environment we are studying large holistic systems in which there are multiple interconnected elements.

1. Troubles

Elizabeth Fisher

Environmental problems are the troubles of politics, economics, and philosophy. They are often bitter troubles, revealing deep divisions in societies over how life should be lived. These divisions concern global environmental problems and also environmental issues that affect specific communities. ‘Troubles’ explains how environmental law is a necessary response to environmental problems providing legislation, case law, international agreements, and regulatory strategies to address the collective nature of environmental problems. It also ensures that collective action in relation to environmental problems is authoritative and consistent with the rule of law and other principles of legitimate action. Environmental law is built on existing legal frameworks, but often requires the development of new legal obligations and doctrine.

10. Lessons

Elizabeth Fisher

We live in precarious times. The environmental problems of the Anthropocene are products of our interconnectedness. ‘Lessons’ explains that it is important to understand what environmental law is, despite its complexity. Why does environmental law exist and what can it do? This VSI provides three lessons. First, environmental law is necessary. Second, environmental law is not a set of magic wands for the troubles of environmental problems. It is a vast field of practice concerned with the legitimate management of environmental problems and the resolution of disputes that arise in relation to those problems. Third, there is a need for legal imagination to help existing legal structures evolve to address environmental issues.
3. The substance of environmental law
Elizabeth Fisher

Environmental problems have a socio-political aspect, but they are also very real collective action problems that require collective responses. Law is the most legitimate and stable medium through which to foster and maintain collective responses to environmental problems. Environmental law has thus developed at all levels of government. It is a dense thicket of legislation, treaties, policies, regulatory strategies, and case law shaped by the complexities of many different environmental problems. ‘The substance of environmental law’ considers the diversity, material, and legal categorization of environmental law and the pursuit of stability. Environmental law is a complex field of legal practice embedded in a legal order that responds to the complexity of environmental problems.

4. The history of environmental law
Elizabeth Fisher

‘The history of environmental law’ explains that environmental problems have been inherent in civilization since the beginning and have needed collective management. It tracks environmental issues and how societies managed them from ancient Rome to the Middle Ages, and then through to industrialization. The increasing international dimension of environmental problems is discussed, as well as the emerging environmentalism of the 1960s. The 1970s saw regional and international agreements signed in relation to a range of pollution and nature conservation issues, but there was disenchantment by the 2000s when environmental laws began to be seen as a threat to economic growth. Finally, the ultimate tragedy of the commons—climate change—is discussed.

5. Expanding legal imagination
Elizabeth Fisher

The creation and operation of environmental law has forced lawyers to reflect upon and develop legal concepts, rules, and principles. This is because environmental law is not confined to the world of contract law in which two parties are legally bound by an agreement—an agreement that manages their legal expectations, obligations, and rights. Legal imagination is needed to develop law to respond to a world of multiple interconnected parties, scientific uncertainty, and socio-political conflict. ‘Expanding legal imagination’
discusses the growth of international environmental law; considers the differences between
nuisance law and criminal law; and explains environmental impact assessments as well as
legal standing and access to courts.

6. The significance of nation states
Elizabeth Fisher

Environmental problems transcend the boundaries of nation states. That fact is a reminder of
the physical reality of such problems, but—for good or ill—political and legal imagination
is the product of political communities that cluster into nation states. ‘The significance of
nation states’ looks at how environmental law is shaped by the legal culture of nation states.
It also discusses the difference between civil law systems and common law systems. The
internal constitutional arrangements of a country are fundamental to how environmental law
develops in a particular legal culture. Is a ‘global environmental law’ emerging?

9. The many forms of environmental justice
Elizabeth Fisher

For many lawyers and non-lawyers alike environmental law is, and should be, about justice.
The socio-political complexity of environmental problems means, however, that justice in
the environmental law context is not a single ideal. It is many ways of forging meaning that
cross and intersect the landscape of environmental law. ‘The many forms of environmental
justice’ first considers the environmental rule of law, which has been aided by the creation
of courts and tribunals with the expertise to hear and adjudicate environmental law disputes.
It then discusses environmental democracy and the creation and enforcement of legal
rights, followed by new ideas, including Earth jurisprudence and wild law, and indigenous
concepts of environmental protection.

7. Power and accountability in environmental law
Elizabeth Fisher

Nation states dominate environmental law because of the need for a comprehensive exercise
of authority in response to a collective action problem within any particular jurisdiction.
‘Power and accountability in environmental law’ explains that what makes the exercise
of state power legitimate is that it is employed in accordance with established principles
of good government—principles nearly always embodied in law. However, behind many environmental debates and disagreements are disagreements about the power of the state. The different administrative institutions of environmental law are described as well as how scientific expertise is fundamental to environmental law. The judicial review process is also outlined.

6. What international law does well
Vaughan Lowe

States cooperate in making and applying international law in circumstances where they are agreed upon the goals to be pursued, so that the law is employed to express a willing cooperation between them rather than to force rules upon them. ‘What international law does well’ considers the mechanisms of why and how States cooperate. Some arrangements are designed to facilitate transactions rather than to prescribe rules or standards. Examples include cooperation between legal systems and the United Nations. Key areas where international law has had success are in the international economy, through the World Trade Organization; humanitarian law and human rights; environmental protection; and the repression of criminal activity.